

**ASSEMBLY BILL**

**No. 6**

**Introduced by Assembly Member Cohn**

December 2, 2002

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An act to amend Section 653w of the Penal Code, relating to crime.

LEGISLATIVE COUNSEL'S DIGEST

AB 6, as introduced, Cohn. Crime.

Existing law provides that a person is guilty of failure to disclose the origin of a recording or audiovisual work if, for commercial advantage or private financial gain, he or she advertises, sells, rents, or manufactures, or possesses for those purposes, a recording or audiovisual work which does not disclose the name of the manufacturer, author, artist, performer, or producer, as specified. Failure to disclose the origin of a recording or audiovisual work is punishable by imprisonment in a county jail, imprisonment in the state prison, and fine, or by both imprisonment and fine, as specified, depending on the number of articles of audio recordings or audiovisual works involved, and whether the offense is a first offense or a second or subsequent offense.

This bill would provide that a violation of this provision involving at least 50 articles of audio recordings or audiovisual works or a combination of at least 50 articles of audio recordings or audiovisual works would be punishable by imprisonment in a county jail for a period of one year, except in an unusual case in which the court makes special findings and states on the record the reasons for imposing a lesser sentence or fine. Because this bill would cause more offenders to be sentenced to a term of imprisonment in a county jail, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 653w of the Penal Code is amended to  
2 read:

3 653w. (a) A person is guilty of failure to disclose the origin  
4 of a recording or audiovisual work—~~when~~ if, for commercial  
5 advantage or private financial gain, he or she knowingly advertises  
6 or offers for sale or resale, or sells or resells, or causes the rental,  
7 sale or resale, or rents, or manufactures, or possesses for these  
8 purposes, any recording or audiovisual work, the cover, box,  
9 jacket, or label of which does not clearly and conspicuously  
10 disclose the actual true name and address of the manufacturer  
11 thereof and the name of the actual author, artist, performer,  
12 producer, programmer, or group. This section does not require the  
13 original manufacturer or authorized licensees of software  
14 producers to disclose the contributing authors or programmers.

15 As used in this section, “recording” means any tangible  
16 medium upon which information or sounds are recorded or  
17 otherwise stored, including any phonograph record, disc, tape,  
18 audio cassette, wire, film, or other medium on which information  
19 or sounds are recorded or otherwise stored, but does not include  
20 sounds accompanying a motion picture or other audiovisual work.

21 As used in this section, “audiovisual works” are the physical  
22 embodiment of works that consist of related images which are  
23 intrinsically intended to be shown by the use of machines or  
24 devices such as projectors, viewers, or electronic equipment,



1 together with accompanying sounds, if any, regardless of the  
2 nature of the material objects such as films or tapes on which the  
3 works are embodied.

4 (b) Any person who has been convicted of a violation of  
5 subdivision (a) shall be punished as follows:

6 (1) If the offense involves the ~~advertising~~ *advertisement*, offer  
7 for sale or resale, ~~selling~~ *sale*, rental, ~~manufacturing~~ *or*  
8 *manufacture*, or possession for these purposes, of at least 1,000  
9 articles of audio recordings or 100 articles of audiovisual works  
10 described in subdivision (a), the person shall be punished by  
11 imprisonment in a county jail not to exceed one year, or by  
12 imprisonment in the state prison for two, three, or five years, or by  
13 a fine not to exceed two hundred fifty thousand dollars (\$250,000),  
14 or by both.

15 (2) *If the offense involves the advertisement, offer for sale or*  
16 *resale, sale, rental, or manufacture, or possession for these*  
17 *purposes, of at least 50 articles of audio recordings or audiovisual*  
18 *works, or a combination of at least 50 articles of audio recordings*  
19 *and audiovisual works described in subdivision (a), the person*  
20 *shall be punished by imprisonment in a county jail for a period of*  
21 *one year, except in an unusual case in which the interests of justice*  
22 *would be better served by imposition of a lesser sentence or fine,*  
23 *in which case the court shall state on the record the reasons for its*  
24 *sentencing disposition.*

25 (3) Any other violation of subdivision (a) not described in  
26 ~~paragraph (1)~~ *paragraph (1) or (2)*, shall, upon a first offense, be  
27 punished by imprisonment in a county jail not to exceed one year,  
28 or by a fine not to exceed twenty-five thousand dollars (\$25,000),  
29 or by both.

30 ~~(3)~~

31 (4) A second or subsequent conviction under subdivision (a)  
32 not described in paragraph (1), shall be punished by imprisonment  
33 in a county jail not to exceed one year or in the state prison, or by  
34 a fine not to exceed one hundred thousand dollars (\$100,000), or  
35 by both.

36 SEC. 2. Notwithstanding Section 17610 of the Government  
37 Code, if the Commission on State Mandates determines that this  
38 act contains costs mandated by the state, reimbursement to local  
39 agencies and school districts for those costs shall be made pursuant  
40 to Part 7 (commencing with Section 17500) of Division 4 of Title

1 2 of the Government Code. If the statewide cost of the claim for  
2 reimbursement does not exceed one million dollars (\$1,000,000),  
3 reimbursement shall be made from the State Mandates Claims  
4 Fund.

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